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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5327

12 **ROSEBILL PHARMACY CORP. DBA**
13 **MID VALLEY PHARMACY; FRANK PO**
14 **KEI WONG**
2519 Royal Avenue
Simi Valley, CA 93065

A C C U S A T I O N

15 Pharmacy Permit No. PHY 47423,

16 and

17 **FRANK PO KEI WONG**
18 2519 Royal Avenue
Simi Valley, CA 93065

19 **Pharmacist License No. RPH 43505**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

24 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
25 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

26 2. On or about July 17, 2006, the Board of Pharmacy issued Pharmacy Permit Number
27 PHY 47423 to Rosebill Pharmacy Corp. dba Mid Valley Pharmacy with Frank Po Kei Wong as
28 President and Pharmacist-in-Charge ("Respondent Pharmacy"). The Pharmacy Permit was in full

1 force and effect at all times relevant to the charges brought herein and will expire on July 1, 2015,
2 unless renewed.

3 3. On or about July 30, 1990, the Board of Pharmacy issued Pharmacist License Number
4 RPH 43505 to Frank Po Kei Wong ("Respondent Wong"). The Pharmacist License was in full
5 force and effect at all times relevant to the charges brought herein and will expire on September
6 30, 2015, unless renewed.

7 JURISDICTION

8 4. This Accusation is brought before the Board of Pharmacy ("Board"), Department of
9 Consumer Affairs, under the authority of the following laws. All section references are to the
10 Business and Professions Code unless otherwise indicated.

11 5. Section 4300.1 of the Code states:

12 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
13 operation of law or by order or decision of the board or a court of law, the placement of a license
14 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
15 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
16 proceeding against, the licensee or to render a decision suspending or revoking the license."

17 6. Section 4300 of the Code states, in pertinent part:

18 "(a) Every license issued may be suspended or revoked.

19 "(b) The board shall discipline the holder of any license issued by the board, whose default
20 has been entered or whose case has been heard by the board and found guilty, by any of the
21 following methods:

22 "(1) Suspending judgment.

23 "(2) Placing him or her upon probation.

24 "(3) Suspending his or her right to practice for a period not exceeding one year.

25 "(4) Revoking his or her license.

26 "(5) Taking any other action in relation to disciplining him or her as the board in its
27 discretion may deem proper."

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STATUTES AND REGULATIONS

1
2 7. Section 4115, subdivision (e) of the Code states:

3 "(e) No person shall act as a pharmacy technician without first being licensed by the board
4 as a pharmacy technician."

5 8. Section 4301 of the Code states, in pertinent part:

6 "The board shall take action against any holder of a license who is guilty of unprofessional
7 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

8 Unprofessional conduct shall include, but is not limited to, any of the following:

9 ...

10 "(j) The violation of any of the statutes of this state, or any other state, or of the United
11 States regulating controlled substances and dangerous drugs.

12 ...

13 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
14 violation of or conspiring to violate any provision or term of this chapter or of the applicable
15 federal and state laws and regulations governing pharmacy, including regulations established by
16 the board or by any other state or federal regulatory agency."

17 9. Health and Safety Code section 11165, subdivision (d) states:

18 "(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
19 substance, as defined in the controlled substances schedules in federal law and regulations,
20 specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of
21 Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following
22 information to the Department of Justice as soon as reasonably possible, but not more than seven
23 days after the date a controlled substance is dispensed, in a format specified by the Department of
24 Justice:

25 "(1) Full name, address, and, if available, telephone number of the ultimate user or
26 research subject, or contact information as determined by the Secretary of the United States
27 Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

1 "(2) The prescriber's category of licensure, license number, national provider
2 identifier (NPI) number, if applicable, the federal controlled substance registration number, and
3 the state medical license number of any prescriber using the federal controlled substance
4 registration number of a government-exempt facility.

5 "(3) Pharmacy prescription number, license number, NPI number, and federal
6 controlled substance registration number.

7 "(4) National Drug Code (NDC) number of the controlled substance dispensed.

8 "(5) Quantity of the controlled substance dispensed.

9 "(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th
10 revision (ICD-10) Code, if available.

11 "(7) Number of refills ordered.

12 "(8) Whether the drug was dispensed as a refill of a prescription or as a first-time
13 request.

14 "(9) Date of origin of the prescription.

15 "(10) Date of dispensing of the prescription."

16 10. California Code of Regulations, title 16, section 1707.5, subdivision (d) states:

17 "(d) The pharmacy shall have policies and procedures in place to help patients with limited
18 or no English proficiency understand the information on the label as specified in subdivision (a)
19 in the patient's language. The pharmacy's policies and procedures shall be specified in writing and
20 shall include, at minimum, the selected means to identify the patient's language and to provide
21 interpretive services in the patient's language. The pharmacy shall, at minimum, provide
22 interpretive services in the patient's language, if interpretive services in such language are
23 available, during all hours that the pharmacy is open, either in person by pharmacy staff or by use
24 of a third-party interpretive service available by telephone at or adjacent to the pharmacy counter."

25 11. California Code of Regulations, title 16, section 1715 states, in pertinent part:

26 "(a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or section
27 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's
28 compliance with federal and state pharmacy law. The assessment shall be performed before July 1

1 of every odd-numbered year. The primary purpose of the self-assessment is to promote
2 compliance through self-examination and education.

3 ...
4 "(c) The components of this assessment shall be on Form 17M-13 (Rev. 01/11) entitled
5 "Community Pharmacy Self-Assessment Hospital Outpatient Pharmacy Self-Assessment" and on
6 Form 17M-14 (Rev. 01/11) entitled "Hospital Pharmacy Self-Assessment" which are hereby
7 incorporated by reference to evaluate compliance with federal and state laws and regulations.

8 "(d) Each self-assessment shall be kept on file in the pharmacy for three years after it is
9 performed."

10 12. Code of Federal Regulations, title 21 section 1304.11 states, in pertinent part:

11 "(a) General requirements. Each inventory shall contain a complete and accurate record of
12 all controlled substances on hand on the date the inventory is taken, and shall be maintained in
13 written, typewritten, or printed form at the registered location. An inventory taken by use of an
14 oral recording device must be promptly transcribed. Controlled substances shall be deemed to be
15 "on hand" if they are in the possession of or under the control of the registrant, including
16 substances returned by a customer, ordered by a customer but not yet invoiced, stored in a
17 warehouse on behalf of the registrant, and substances in the possession of employees of the
18 registrant and intended for distribution as complimentary samples. A separate inventory shall be
19 made for each registered location and each independent activity registered, except as provided in
20 paragraph (e)(4) of this section. In the event controlled substances in the possession or under the
21 control of the registrant are stored at a location for which he/she is not registered, the substances
22 shall be included in the inventory of the registered location to which they are subject to control or
23 to which the person possessing the substance is responsible. The inventory may be taken either as
24 of opening of business or as of the close of business on the inventory date and it shall be indicated
25 on the inventory.

26 "(b) Initial inventory date. Every person required to keep records shall take an inventory of
27 all stocks of controlled substances on hand on the date he/she first engages in the manufacture,
28 distribution, or dispensing of controlled substances, in accordance with paragraph (e) of this

1 section as applicable. In the event a person commences business with no controlled substances on
2 hand, he/she shall record this fact as the initial inventory.

3 "(c) Biennial inventory date. After the initial inventory is taken, the registrant shall take a
4 new inventory of all stocks of controlled substances on hand at least every two years. The biennial
5 inventory may be taken on any date which is within two years of the previous biennial inventory
6 date."

7 COST RECOVERY

8 13. Section 125.3 of the Code states, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 BACKGROUND FACTS

13 14. On or about February 28, 2014, an agent of the Board checked the Controlled
14 Substance Utilization Review and Evaluation System ("CURES") for Respondent Pharmacy's
15 compliance with the requirement that it submit Schedule II, III, and IV controlled substance
16 prescription data to the California Department of Justice. The Pharmacy Compliance Report
17 showed that Respondent Pharmacy had only submitted controlled substance prescription data one
18 time: for the months of April, May, and June 2013 on June 13, 2013.

19 15. On or about May 16, 2014, a Board Inspector requested a CURES Pharmacy
20 Compliance Report for Respondent Pharmacy. On or about May 27, 2014, the Board Inspector
21 received the Pharmacy Compliance Report. The Report showed that Respondent Pharmacy had
22 submitted controlled substance prescription data for April, May, and June 2013 on June 13, 2013.
23 The Report also showed that Respondent Pharmacy had submitted controlled substance
24 prescription data for July through December 2013 on April 30, 2014 and January through March
25 2014 on April 30, 2014.

26 16. On or about June 12, 2014, a Board Inspector conducted an inspection at Respondent
27 Pharmacy. Pharmacy technician Steven Carrillo (TCH 34924) was present at the pharmacy that
28 day. The Board Inspector discovered that Mr. Carrillo's pharmacy technician registration was

1 cancelled and had expired on December 31, 2013.¹ Nevertheless, Mr. Carrillo was still working
2 at Respondent Pharmacy in the capacity as a pharmacy technician.

3 17. During the inspection, the Board Inspector asked Respondent Wong for the
4 Community Pharmacy Self-Assessment form but Respondent Wong could only produce a Self-
5 Assessment from 2007. The Board Inspector also asked Respondent Wong for the biennial Drug
6 Enforcement Administration ("DEA") Inventory but Respondent Wong was only able to provide a
7 perpetual log of the pharmacy's Schedule II controlled substances. Further, the Board Inspector
8 asked Respondent Wong for Respondent Pharmacy's required policies and procedures. Certain
9 policies and procedures were missing, including a policy and procedure regarding providing
10 interpretive services.

11 18. Also during the inspection, the Board Inspector discussed the CURES reporting
12 issues with Respondent Wong and Mr. Carrillo. Mr. Carrillo stated that he had been attempting
13 to submit data to Atlantic Associates² but due to technical difficulties, the data was not
14 transmitting. However the only controlled substance prescription data that Respondent Pharmacy
15 was able to produce in addition to the June 13, 2013 and April 30, 2014 data that had already been
16 submitted was a report created on September 30, 2011 with a date range of June 1, 2011 through
17 September 30, 2011.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Failure to Conduct Pharmacy Self-Assessment)**

20 19. Respondent Pharmacy and Respondent Wong are subject to disciplinary action under
21 Code section 4301, subdivision (o), in conjunction with California Code of Regulations, title 16,
22 section 1715, on the grounds of unprofessional conduct in that at the time of the Board inspection
23 on June 12, 2014, Respondent Pharmacy and Respondent Wong did not have completed
24 Community Pharmacy Self-Assessment forms for 2009, 2011, and 2013. A Self-Assessment
25 must be completed before July 1 of every odd-numbered year of the pharmacy's compliance with

26
27 ¹ Mr. Carrillo provided documentation showing that he had submitted payment for his license
renewal but the payment was late because of a change of address.

28 ² Atlantic Associates is the third party administrator for submitting data to CURES.

1 state and federal pharmacy law. Complainant incorporates by reference Paragraphs 14 through 18
2 as though fully set forth herein.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Inventory Requirements)**

5 20. Respondent Pharmacy and Respondent Wong are subject to disciplinary action under
6 Code section 4301, subdivision (o), in conjunction with Code of Federal Regulations, title 21,
7 section 1304.11, subdivision (c), on the grounds of unprofessional conduct in that at the time of
8 the Board inspection on June 12, 2014, Respondent Pharmacy did not have a completed biennial
9 DEA controlled substance inventory from 2007 to 2014. A new inventory of must be taken of all
10 stocks of controlled substances on hand at least every two years. Complainant incorporates by
11 reference Paragraphs 14 through 18 as though fully set forth herein.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Failure to Report to the Controlled Substance Utilization Review and Evaluation System)**

14 21. Respondent Pharmacy and Respondent Wong are subject to disciplinary action under
15 Code section 4301, subdivision (j), in conjunction with Health and Safety Code section 11165,
16 subdivision (d), on the grounds of unprofessional conduct in that at the time of the Board
17 inspection on June 12, 2014, Respondent Pharmacy had not submitted weekly controlled
18 substance prescription data to the California Department of Justice, through CURES. Respondent
19 Pharmacy had only submitted limited data on June 13, 2013 and April 30, 2014. Complainant
20 incorporates by reference Paragraphs 14 through 18 as though fully set forth herein.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Employment of an Unlicensed Pharmacy Technician)**

23 22. Respondent Pharmacy and Respondent Wong are subject to disciplinary action under
24 Code section 4301, subdivision (o), in conjunction with Code section 4115, subdivision (e), in
25 that at the time of the Board inspection on June 12, 2014, Respondent Pharmacy and Respondent
26 Wong employed Steven Carrillo as a pharmacy technician, even though Mr. Carrillo's pharmacy
27 technician registration was cancelled and expired. Complainant incorporates by reference
28 Paragraphs 14 through 18 as though fully set forth herein.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Failure to Have Translation Policy and Procedure)

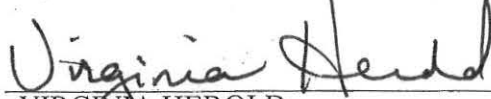
3 23. Respondent Pharmacy and Respondent Wong are subject to disciplinary action under
4 Code section 4301, subdivision (o), in conjunction with California Code of Regulations, title 16,
5 section 1707.5, subdivision (d), in that at the time of the Board inspection on June 12, 2014,
6 Respondent Pharmacy did not have in place policies and procedures for interpretive services for
7 its customers. Respondent Pharmacy was required to have policies and procedures in place to
8 help patients with limited or no English proficiency understand the information on prescription
9 labels in the patient's language. Complainant incorporates by reference Paragraphs 14 through 18
10 as though fully set forth herein.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Pharmacy issue a decision:

- 14 1. Revoking or suspending Pharmacy Permit Number PHY 47423, issued to Rosebill
15 Pharmacy Corp. dba Mid Valley Pharmacy with Frank Po Kei Wong as President and Pharmacist-
16 in-Charge;
- 17 2. Revoking or suspending Pharmacist License Number RPH 43505, issued to Frank Po
18 Kei Wong; and
- 19 3. Ordering Mid Valley Pharmacy and Frank Po Kei Wong to pay the Board of
20 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
21 Business and Professions Code section 125.3;
- 22 4. Taking such other and further action as deemed necessary and proper.

23 DATED: 5/1/15

24 
25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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